



DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA-2012-0109; Notice 2]

Cooper Tire & Rubber Company, Grant of Petition for
Decision of Inconsequential Noncompliance

AGENCY: National Highway Traffic Safety Administration, DOT

ACTION: Grant of Petition

SUMMARY: Cooper Tire & Rubber Company (Cooper)¹ has determined that certain Cooper brand replacement tires manufactured between May 20, 2012 and June 16, 2012, do not fully comply with paragraph S5.5 of Federal Motor Vehicle Safety Standard (FMVSS) No. 139, *New Pneumatic Radial Tires for Light Vehicles*. Cooper has filed an appropriate report dated July 5, 2012, pursuant to 49 CFR Part 573, *Defect and Noncompliance Responsibility and Reports*.

Pursuant to 49 U.S.C. 30118(d) and 30120(h) and the rule implementing those provisions at 49 CFR Part 556, Cooper has petitioned for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential to motor vehicle safety. Notice of receipt of the petition was published, with a 30-day public comment period, on February 11, 2013 in the Federal Register (78

¹ Cooper Tire & Rubber Company is a manufacturer of replacement equipment and is registered under the laws of the state of Delaware.

FR 9775.) No comments were received. To view the petition and all supporting documents log onto the Federal Docket Management System (FDMS) website at: <http://www.regulations.gov/>. Then follow the online search instructions to locate docket number "NHTSA-2012-0109."

CONTACT INFORMATION: For further information on this decision contact Mr. Abraham Diaz, Office of Vehicle Safety Compliance, the National Highway Traffic Safety Administration (NHTSA), telephone (202)366-5310, facsimile (202)366-7002.

EQUIPMENT INVOLVED: Affected are approximately 1,080 size P225/70R14 El Dorado Legend GT brand standard load replacement tires manufactured in Mexico by Cooper's affiliate, Corporación de Occidente S.A. de C.V., between May 20, 2012, and June 16, 2012.

RULE TEXT: Section S5.5 of FMVSS No. 139 specifically states:

S5.5 Tire markings. Except as specified in paragraphs (a) through (i) of S5.5, each tire must be marked on each sidewall with the information specified in S5.5(a) through (d) and on one sidewall with the information specified in S5.5(e) through (i) according to the phase-in schedule specified in S7 of this standard. The markings must be placed between the maximum section width and the bead on at least one sidewall, unless the maximum section width of the tire is located in an area that is not more than one-fourth of the distance from the bead to the shoulder of the tire. If the maximum section width falls within that area, those markings must appear between the bead and a point one-half the distance from the bead to the shoulder of the tire, on at least one sidewall. The markings must be in letters and numerals not less than 0.078

inches high and raised above or sunk below the tire surface not less than 0.015 inches.

(e) The generic name of each cord material used in the plies (both sidewall and tread area) of the tire;

(f) The actual number of plies in the sidewall, and the actual number of plies in the tread area, if different;...

SUMMARY OF COOPER'S ANALYSES: Cooper explains that the noncompliance is that due to a mold labeling error the sidewall marking on the tires incorrectly describes the actual number of plies in the tread area of the tires as required by paragraph S5.5(f).

Specifically, the tires in question were inadvertently manufactured with "TREAD 2 PLY STEEL + 2 PLY POLYESTER; SIDEWALL 2 PLY POLYESTER." The labeling should have been "TREAD 1 PLY NYLON + 2 PLY STEEL + 2 PLY POLYESTER; SIDEWALL 2 PLY POLYESTER."

Cooper believes that while the noncompliant tires are mislabeled, the subject tires in fact have more tread plies than indicated and meet or exceed all performance requirements as required in part by FMVSS No. 139.

In addition, Cooper states that it has corrected the problem that caused the noncompliance so that it will not reoccur in future production.

In summation, Cooper believes that the described noncompliance of the subject tires is inconsequential to motor vehicle safety, and that its petition, to exempt Cooper from providing recall notification of noncompliance as required by 49 U.S.C. 30118 and remedying the recall noncompliance as required by 49 U.S.C. 30120 should be granted.

NHTSA DECISION: The agency agrees with Cooper that the noncompliance is inconsequential to motor vehicle safety. The agency believes that the true measure of inconsequentiality to motor vehicle safety in this case is that there is no effect of the noncompliance on the operational safety of vehicles on which these tires are mounted. The safety of people working in the tire retread, repair, and recycling industries must also be considered.

Although tire construction affects the strength and durability, neither the agency nor the tire industry provides information relating tire strength and durability to the number of plies and types of ply cord material in the tread and sidewall. Therefore, tire dealers and customers should consider the tire construction information along with other information such as the load capacity, maximum inflation pressure, and tread wear, temperature, and traction ratings to assess performance capabilities of various tires. In the agency's judgment, the incorrect labeling of the tire construction information will

have an inconsequential effect on motor vehicle safety because most consumers do not base tire purchases or vehicle operation parameters on the number of plies in a tire.

The agency also believes the noncompliance will have no measurable effect on the safety of the tire retread, repair, and recycling industries. The use of steel cord construction in the sidewall and tread is the primary safety concern of these industries. In this case, since the tires are marked correctly with respect to steel ply content, this potential safety concern does not exist.

In consideration of the foregoing, NHTSA has decided that Cooper has met its burden of persuasion that the FMVSS No. 139 noncompliance in the tires identified in Cooper's Noncompliance Information Report is inconsequential to motor vehicle safety. Accordingly, Cooper's petition is granted and the petitioner is exempted from the obligation of providing notification of, and a remedy for, that noncompliance under 49 U.S.C. 30118 and 30120.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance. Therefore, this decision

only applies to approximately 1,080 tires that Cooper no longer controlled at the time that it determined that a noncompliance existed in the subject tires. However, the granting of this petition does not relieve tire distributors and dealers of the prohibitions on the sale, offer for sale, or introduction or delivery for introduction into interstate commerce of the noncompliant tires under their control after Cooper notified them that the subject noncompliance existed.

AUTHORITY: (49 U.S.C. 30118, 30120: delegations of authority at 49 CFR 1.95 and 501.8)

ISSUED ON:

JULY 25, 2013

Claude H. Harris, Director
Office of Vehicle Safety Compliance

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